(39)

# HIGH COURT OF CHHATTISGARH AT BILASPUR

## Writ Petition No.4097/2000

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Petitioner : Sudeep Chatterjee, S/o Late Shyama Pad Chatterjee, R/o Baikunthpur, District Raigarh, Madhya Pradesh

Versus

Respondents :
1. The State Administrative Tribunal, Raipur Bench, Through: Its Additional Registrar, RDA Building, Kachheri Chowk, Raipur, Madhya Pradesh.
2. The State of Madhya Pradesh, Through: The Secretary, School Education Department, Ministry of School Education, Vallabh Bhawan, Bhopal, Madhya Pradesh.
3. The Director, Public Instructions, Satpura Bhawan, Bhopal, Madhya Pradesh.
4. The Dy. Director, Education Department, Education District, District Dharamjaigarh, District Raigarh, Madhya Pradesh
5. The Collector, Tribal Welfare Department, District Raigarh, Madhya Pradesh

Shri Vivek Ranjan Tiwari, Counsel for the petitioner.
*Shri Utkarsh Verma, Dy. Govt. Advocate for State/respondents.*

ORAL ORDER
(Passed on 26th July, 2006)

The following oral order of the Court was passed by S.R.Nayak, C.J.

The petitioner's late elder sister Ku.Bani Chatterjee by name while working as Assistant Teacher in the Department of School Education died on 5.11.1978. The petitioner being a brother of the deceased, sought appointment on compassionate ground in terms of the Compassionate Appointment Scheme framed vide Government Orders dated 10.6.1994 and 3.1.1995. In response to it, the petitioner was appointed as Assistant Teacher purely on temporary basis and subject to the condition that his services would be liable to be terminated at any time and without notice to him.

2. When the matter stood thus, the 4th respondent realizing that the petitioner was wrongly appointed under the aforementioned Government Orders dated 10.6.1994 and 3.1.1995 and infact, he is not entitled for appointment in terms of those Government Orders, by his order dated 5.6.1998, terminated the services of the petitioner. Feeling aggrieved by the said order, the petitioner instituted O.A. No. 78/1999 in the Madhya Pradesh Administrative Tribunal, Raipur Bench (for short the 'Tribunal'). The Tribunal having opined that in terms of the Government Order dated 3.1.1995, the petitioner is not entitled to appointment on compassionate ground dismissed the Original Application No. 78/1999, by the order impugned in this writ petition.

3. In decision-making, the Tribunal also took note of the fact that the petitioner was appointed purely on adhoc/temporary basis with a condition that his services would be terminated at any time without any notice and since the termination order is termination simplicitor, the petitioner could not have any legal objection to the same.

4. We have heard learned counsel for the parties. It was cotended by learned counsel for the petitioner that the petitioner being a brother of the deceased teacher and since the deceased teacher did not leave any other relatives, is entitled to be appointed to a suitable post on a compassionate ground in terms of the Government Orders. It was next contended by learned counsel for the petitioner that before terminating the services of the petitioner that petitioner ought to have been given an opportunity to have his say in the matter and therefore, the impugned termination order is violative of Article 14 of the Constitution of India and principles of natural justice. *Per contra*, learned Dy. Govt. Advocate for the State would contend that since under the Government Orders referred to above, the petitioner is not entitled to appointment on compassionate ground, the

initial appointment given to him did not vest any enforceable right on the petitioner, and therefore, giving him an opportunity before passing the impugned order would not arise. He would submit that since the termination order is simplicitor, it would not cause any stigma to the petitioner to seek alternative employment. Therefore, he would submit, the 4th respondent did not give notice to the petitioner before terminating his services.

5. Having heard the learned counsel for the parties, we do not find any weighty or substantive ground to interfere with the termination order, as affirmed by the Tribunal. It is well settled that provisions of a Compassionate Appointment Scheme should strictly be construed. Unless the Scheme framed by a State employer providing for appointment on compassionate ground entitles a person to seek appointment under such Scheme, Court cannot direct a State employer to give appointment to an ineligible person on compassionate ground.

6. We have pointedly asked the learned counsel for the petitioner to point out the provision in the aforementioned two Government Orders dated 10.6.1994 and 3.1.1995 which enables the petitioner to seek appointment on compassionate ground, and learned counsel for the petitioner would draw our attention to clause 17 of the Government order dated 10.6.1994 which reads as follows:

> 'मृत शासकीय सेवक की विधवा का कोई व्यस्क पुत्र या पुत्री उसकी देखभाल करनेके लिये न हो और वह स्वयं भी शासकीय सेवा करने के लिये सक्षम न हो तो उसे अधिकार होगा कि वह किसी ऐसे अन्य नजदीकी रिश्तेदार को नियुक्ति के लिये नामांकित कर सकेगी, जो उसकी देखभाल कर सके। ऐसा नामांकरन उसके द्वारा हलफनामे पर करना होगा।'

Clause 17 of Government Order dated 10.6.1994 only provides that in case of a Government servant dying in harness leaving a widow and children and the children so left behind him are not eligible to seek appointment on compassionate ground and the widow is also unable to accept the appointment on compassionate ground, the widow of the deceased employee can nominate a close relative for the purpose of appointment on compassionate ground if such relative undertakes to look after the widow.

7. We are at a loss to understand how that clause would enable the petitioner to claim appointment on compassionate ground. Except Clause-17, it is not the contention of the learned counsel for the petitioner that the petitioner is entitled for appointment on compassionate ground under any other Clause of Government orders dated 10.6.1994 or 3.1.1995. In that view of the matter, we cannot take any exception to the impugned order dated 1.6.2000 of the Tribunal.

8. This petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya